

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

PLATT CONVENIENCE, INC.,  
individually and as  
representative of a class of  
similarly-situated persons and entities,

COA Case No. \_\_\_\_\_

Plaintiff,

v.

CITY OF ANN ARBOR,  
a municipal corporation,

Defendant.

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**PLAINTIFFS' ORIGINAL CLASS ACTION COMPLAINT  
TO ENFORCE THE HEADLEE AMENDMENT  
PURSUANT TO CONST 1963, ART 9, § 32**

**PURSUANT TO MCR 7.206(E) AND MCR 2.112(M), PLAINTIFF STATES THAT IT  
DOES NOT BELIEVE THERE ARE ANY FACTUAL QUESTIONS THAT ARE  
ANTICIPATED TO REQUIRE RESOLUTION BY THE COURT AND PLAINTIFF  
DOES NOT ANTICIPATE THE NEED FOR DISCOVERY AND THE  
DEVELOPMENT OF A FACTUAL RECORD.**

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Plaintiff Platt Convenience, Inc. (“Plaintiff”), by its attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated class members, states the following for its Original Class Action Complaint to Enforce the Headlee Amendment Pursuant to Const. 1963, Art 9, § 32 against the City of Ann Arbor, Michigan (the “City”):

### **INTRODUCTION**

1. This is an action against the City challenging mandatory stormwater service charges (the “Stormwater Charges” or the “Charges”) imposed by the City on virtually all property owners in the City for the purpose of recovering the costs the City purportedly incurs to operate and maintain its storm drain system. The Charges are purportedly based on the area of “impervious” surfaces (i.e., surfaces that do not absorb rainwater or snowmelt) present on each property.

2. The Stormwater Charges constitute “taxes” that have not been authorized by the City’s voters and therefore violate Art. 9, § 31 of the Michigan Constitution (the “Headlee Amendment”), which provides:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31]

3. In *Bolt v. City of Lansing*, 459 Mich. 152, 587 N.W.2d 264 (1998) (“*Bolt*”), the Supreme Court held that a storm water charge imposed by the City of Lansing on all property owners in the City constituted an unlawful “tax” under the Headlee Amendment. In a later proceeding in the *Bolt* case, the Court of Appeals observed: “The Supreme Court's ruling in *Bolt* became the law of this state effective December 28, 1998. **On that date, all municipalities were put on notice that charges such as the storm water service charge are taxes, subject to the requirements of the Headlee Amendment.**” *Bolt v. City of Lansing*, 238 Mich. App. 37, 49; 604 N.W.2d 745 (1999) (“*Bolt II*”) (emphasis added). Unfortunately, the City here did not heed that notice in 1999.

4. The City began imposing the Stormwater Charges in 1990 without voter approval. In 1998, the Supreme Court made clear in *Bolt* that such voter approval was required. Even though the City has never obtained voter approval for the Stormwater Charges, the City continued to impose the Stormwater Charges after the *Bolt* decision.

5. Nor did the City heed the notice in 2013, when this Court invalidated the City of Jackson's virtually-identical "stormwater utility." *County of Jackson v. City of Jackson*, 302 Mich. App. 90 (2013). Instead, the City continued to impose the Stormwater Charges thereafter even though it should have known that its actions were unlawful in light of the *Bolt* and *Jackson* decisions. The Stormwater Charges here must be similarly invalidated because they are legally indistinguishable from the charges imposed by Lansing and Jackson.

6. In *Bolt*, the Supreme Court identified "three primary criteria to be considered when distinguishing between a fee and a tax" (459 Mich. at p. 161):

- A. "[A] user fee must serve a regulatory purpose rather than a revenue-raising purpose";
- B. "[U]ser fees must be proportionate to the necessary costs of the service"; and
- C. Payment of the fee is voluntary. [459 Mich. at pp. 161-62]

7. The City's Charges have a revenue-raising purpose which significantly outweighs any regulatory purpose of the Charges. The Charges here lack a significant element of regulation because, among other things:

- A. The City fails to require either the City or property owners to identify, monitor and treat contaminated storm and surface water runoff and allows untreated storm water to be discharges into the Huron River – *i.e.*, there is no "end-of-pipe" treatment of the stormwater;
- B. The method of charging does not consider the presence of pollutants on each parcel that contaminate such runoff and contribute to the need for treatment before discharge into navigable waters;

- C. The method of charging does not distinguish between those responsible for greater and lesser levels of runoff; and
- D. The method of charging does not take into account the location and grade of the properties that are subject to the Charges.

8. Further the Charges are not proportionate to the necessary costs of the service for at least seven reasons:

- A. The City's stormwater management activities confer a general public benefit and therefore the Charges are disproportionate to any specific benefits received by the payors of the Charges;
- B. The City assesses Stormwater Charges based solely upon the area of impervious surface present on each assessed property, and therefore fails to recognize that even "pervious" surfaces contribute stormwater to the system. As a result, a property with two acres of total area and 1/4 acre of impervious surfaces, for example, pays the same stormwater charges as a property with 1/2 acre of total area and the same 1/4 acre of impervious surfaces;
- C. The City's arbitrary "tiered" billing methodology results in wildly varying charges for properties that have very similar areas of impervious surfaces and at the same time results in the exact same charges to properties that have wildly-varying areas of impervious surfaces;
- D. The City does not impose Stormwater Charges on public streets and roads, including streets and roads maintained by the City, that contribute significant volumes of stormwater runoff to the system. The City also exempts "undeveloped" property from the Charges. The cost of managing that stormwater therefore is borne (or subsidized) by the persons and entities who pay the Stormwater Charges;
- E. The City diverts the Stormwater Charge revenues to purposes wholly or partially-unrelated to the stormwater system; and
- F. Even after diverting Stormwater Charge revenues, the City has consistently generated a profit from its imposition of the Stormwater Charges.

9. Finally, the Charges are not voluntary because, at the very least they are "effectively compulsory" in that "the property owner has no choice whether to use the service and is unable to control the extent to which the service is used." *Bolt*, 459 Mich. at 167-168.

## **JURISDICTION AND VENUE**

10. Plaintiff is a property owner in the City which incurs the Stormwater Charges. Plaintiff has paid the Stormwater Charges at issue within one year of the filing of this lawsuit and seeks to act as class representative for all similarly-situated persons.

11. Defendant City of Ann Arbor (the “City”) is a municipality located in Washtenaw County, Michigan. The City maintains a Stormwater Sewer System Fund (the “Stormwater Fund”) and prepares financial statements for that Fund.

12. This is an original action filed pursuant to MCR 7.206. This Court is vested with original jurisdiction concurrent with the Circuit Courts to hear original actions challenging the validity of a tax pursuant to Article 9, Section 32 of the Michigan Constitution of 1963. This authority is codified by MCL 600.308a.

## **GENERAL ALLEGATIONS**

13. The City maintains a storm sewer system (the “Stormwater Sewer System”) that is separate from its sanitary sewer system and which is used to collect stormwater that falls on the City’s land area and to convey that stormwater to nearby waterways.

14. Stormwater begins as rain or snowmelt that falls on or washes over both “pervious” (grass, woodlands, gardens and other undeveloped lands) and “impervious” surfaces (roofs, driveways, parking lots, streets and other hard surfaces). Stormwater runoff is created from excess water that cannot be absorbed by pervious surfaces or from water flowing off impervious areas. Rather than being absorbed into the ground, the stormwater runoff enters the City’s stormwater drainage system, a network of catch basins, yard inlets and pipes that keep water from flooding roads and property. Water is diverted through the network to the City’s creeks, lakes, and eventually the Huron River.

15. The City assesses Stormwater Charges for the purpose of operating, maintaining and improving the Stormwater Sewer System as well as to pay for certain purposes, described herein, unrelated to stormwater management.

16. Plaintiff has been assessed, and has paid, Stormwater Charges within one year of the filing of this action.

**THE STORMWATER CHARGES ARE UNLAWFUL TAXES**

17. Long after the Headlee Amendment was enacted in 1978, the City formed a “stormwater utility” and began imposing Stormwater Charges. The City Ordinance creating the stormwater utility was enacted in 1993.

18. In order to impose the Stormwater Charges, the City claims to have conducted a computer analysis of infrared aerial photographs in order to distinguish hard, impervious surfaces (which generally do not absorb rainfall or snowmelt) from “pervious” areas that can more readily absorb rainfall or snowmelt, such as lawns and gardens. The City claims to have measured the areas of impervious surfaces present on each property in the City.

19. For single-family and two-family residential properties, the City has created four “tiers” of charges allegedly based upon the measured impervious surfaces of each such property.

- a. “Tier 1” consists of properties with up to 2,187 square feet of impervious surfaces, all of which are assessed a quarterly charge of \$31.55.
- b. “Tier 2” consists of properties with 2,188 to 4,175 square feet of impervious surfaces, all of which are assessed a quarterly charge of \$55.22.
- c. “Tier 3” consists of properties with 4,176 to 7,110 square feet of impervious surfaces, all of which are assessed a quarterly charge of \$94.
- d. “Tier 4” consists of properties with over 7,110 square feet of impervious surfaces, all of which are assessed a quarterly charge of \$165.66.

20. Commercial and other properties are purportedly billed directly on the impervious areas at a rate of \$851.44 per impervious acre per quarter. All properties incur an additional \$4.15 “customer service charge” per quarter.

21. The Stormwater Charges are based solely upon the impervious land area of each single-family and multifamily parcel, regardless of the actual total land area of that particular parcel.

22. By lumping properties into large impervious acreage-based categories, parcels that have roughly half the impervious surfaces of other parcels end up paying the same amount of Stormwater Charges as other parcels. For example, a parcel with 2,187 square feet of impervious surfaces pays the same quarterly Stormwater Charge as a parcel with 4,175 square feet of impervious surfaces.

23. Not only do parcels with wildly varying areas of impervious surfaces pay the same Stormwater Charges, but parcels that have virtually the same areas of impervious surfaces can pay wildly varying Stormwater Rates. For example, a parcel with 7,110 square feet of impervious surfaces incurs a Stormwater Charge of \$94.65 per quarter but a parcel with 7,115 square feet of impervious surfaces incurs a Stormwater Charge of \$165.66 per quarter.

24. The Stormwater Charges do not take into consideration the fact that pervious surfaces also contribute stormwater runoff to the City’s sewer system.

25. The Stormwater Charges do not take into consideration the presence of pollutants on each parcel that contaminate to such runoff and contribute to the need for treatment before discharge into navigable waters.

26. The Charges fail to distinguish between those responsible for greater or lesser levels of runoff and exclude street rights of way from the properties which incur the Charges.

27. The Stormwater Ordinance does not require either the City or any property owner to identify, monitor, and treat contaminated stormwater runoff.

28. There is no end of pipe treatment for the stormwater runoff.
29. The City's public streets and roads are not subject to the Stormwater Charges. City, county and state rights-of-ways alone account for nearly 2,200 acres, or approximately 30% of the total impervious area within the City. Moreover, contrary to the requirements of Chapter 33, Section 2:212 of the City's own ordinance, the full Stormwater Charges are only assessed against "developed" property in the City.
30. The Stormwater Charges generate revenues far in excess of the City's actual expenses relating to stormwater management. Moreover, the Stormwater Charges also finance governmental activities wholly or partially unrelated to stormwater management.
31. Since at least 2014, the City has set its Stormwater Rates at a level far in excess of the rates that were necessary to finance the actual costs of operating, maintaining and improving its Stormwater Sewer System.
32. Indeed, between June 30, 2014 and June 30, 2020, the City increased its cash and investments in the Stormwater Fund from an already excessive **\$7.2 million to over \$17.7 million** through imposition and collection of the Stormwater Charges.
33. This excessive accumulation of cash was not serendipitous but was undertaken pursuant to a plan to dramatically increase the cash in the Stormwater Fund through 2019 after paying all of the expenses of the Stormwater Fund, including capital improvements and debt service.
34. The City accumulated an additional \$10 million in its Stormwater Fund between June 30, 2014 and June 2020. Indeed, the Stormwater Charges actually generated a much higher return than the \$10 Million reflected in the City's financial statements because the City diverted monies from the Stormwater Fund for other impermissible uses.
35. Thus, the Stormwater Charges are even more excessive and egregious because the City has included in its stormwater rates amounts designed to generate millions of dollars of revenue that



the City has transferred to other City funds or otherwise used to finance general governmental obligations wholly or partially unrelated to its stormwater system.

36. For example, the Stormwater Charges finance the vast majority of the expenses of the City's Forestry Department, a separate department tasked with managing all aspects of the City's "urban forest." The amounts included in the Stormwater Rates to finance the City's Forestry Department (the "Forestry Charges") approximate \$1 million per year. The activities of the Forestry Department, however, confer benefits on the entire community, and not just on persons who pay Stormwater Charges. Indeed, prior to July 1, 2012, those expenses were the responsibility of the City's General Fund.

37. The City itself has touted the public benefits conferred by its "Urban Forest," which is maintained and preserved by the activities of the Forestry Department and financed through Forestry Charges. On the City's website, the City states:

The urban and community forest is a defining and valuable characteristic of the city of Ann Arbor, which residents affectionately call "Tree Town," helping make it a desirable place to live, work and play. It is made up of the trees, shrubs and woody vegetation growing along city streets; in public parks; and on institutional and private property. **The urban community forest provides many environmental, economic and social benefits to the community, including reducing stormwater runoff, improving water and air quality, moderating summer temperatures, lowering utility costs, improving quality of life and beautifying the city.** [emphasis added]

38. The connection between the Forestry Charge included in the Stormwater Rates and the management of stormwater is extremely attenuated at best, and the City concedes that even though the Forestry Department is financed by the Stormwater Fund, the stormwater management benefits provided by the activities of the Forestry Department represent just a fraction of the total benefits purportedly conferred by those activities. Indeed, the City estimates that a "typical tree in Ann Arbor" provides \$149 in benefits every year, but less than 10% of the value of those purported benefits is attributable to enhanced stormwater management.

39. In October 2020, the City's Council awarded a tree pruning contract valued at \$674,000 to be financed by Forestry Charges included in the Stormwater Charge Rates. The City did so even though the Forestry Department's tree pruning program provides public benefits, and does not specifically benefit payers of Stormwater Charges. In this regard, the City's website lists a number of "benefits" of tree pruning, all of which are unrelated to stormwater management:

Trees pruned on a routine basis develop proper form and structure leading to a variety of benefits, including

- \* Lower cost per tree trimmed compared to reactive pruning done in response to storm damage, sight clearance or immediate hazards
- \* Healthier tree canopy as a result of removing dead, dying or diseased limbs, earlier identification and correction of insect/disease problems
- \* Reduction in storm related tree damage
- \* Better clearance and less obstructions in the public right-of-way as well as better sight lines for signs, signals and intersections
- \* Lower future maintenance costs
- \* Improvement of tree's structure to better withstand stresses from wind, ice and rain.

40. At an October 19, 2020 meeting at which the Council approved the tree pruning contract, certain council members expressed that the City's practice of including the Forestry Charges in the Stormwater Charge Rates rendered those Charges unlawful taxes under the *Bolt v. Lansing* case. For example, Councilman Eaton stated:

I want to remind council that this is an essential service, but its relationship to the stormwater fee is marginal at best. In the *Bolt v. Lansing* case, the City of Lansing tried to use its stormwater fees to finance the separation of its sewer system, stormwater and wastewater systems that had been mandated by a regulatory agency. So it was required to do that, and nonetheless, because the benefit being conferred was a benefit that was generalized throughout the community and wasn't particularized to the fee payer based on the amount they were paying, it was considered to be more appropriate for a tax than for a fee. Similarly, with this, if a tree is planted in my front yard, it doesn't benefit somebody in the second ward and there's nobody that person in the second ward can do to minimize their cost for the tree planting elsewhere in the city. **It's so general that it should be funded by a tax, not by a user fee.** The user fee should be for the cost of providing the actual service.

**Another factor in this kind of case is when the service was previously funded from the general fund and then it shifted into this kind of fund. Historically, our forestry department was funded from the general fund, and it was just a number of years ago that it was shifted into our stormwater funding. And that is not going to help us in this litigation, I believe.** So I understand that the next council might want to take this risk, I'm just not willing to impose this risk on them on my way out the door. So if you want to vote in favor of this, **I understand, this is an essential service, it just not appropriately funded with this fee.** So I will be voting against it. If the plaintiff in the Hahn case prevails, we'll have to come up with the \$674,000 somewhere anyways to repay it. So I just think you need to be more cautious with how you use fee revenue in this kind of general operational sense. [emphasis added].

41. Unfortunately, the City Council ultimately did not side with Councilman Eaton, voting 6-5 to approve the tree pruning contract, further confirming that the Forestry Charge constitutes a tax on City landowners.

42. In addition, the Stormwater Fund has been transferring \$85,000 per year to the City's General Fund, specifically for "parks." The transfers purportedly fund things like "Outdoor Educational Signage" and "Educational Programs – Parks and Recreations" and "Brochure Racks". The City apparently justifies these transfers on the grounds that the funded activities relate in some way to stormwater management. However, even a cursory review of the described activities shows that they have nothing, or virtually nothing, to do with stormwater management.

43. On information and belief, the transfers were made without adequate consideration and thus had the effect of forcing the City's property owners who pay Stormwater Charges to finance governmental activities such as parks that should have been financed through general taxation or other sources.

44. Moreover, the transfers were in addition to other monies transferred by the Stormwater Fund each year to other City Funds to reimburse those Funds for purported administrative and other services provided to the Stormwater Fund.

45. The excessive cash reserves cannot be justified as being needed for planned or still-unplanned capital improvements to the storm sewer systems because, among other things, the City

has not traditionally funded capital improvements by tapping its cash reserves. Instead, as reflected in its annual budgets and financial statements, the City has traditionally planned to fund, and actually funded, its capital improvements through a “pay as you go” approach – *i.e.*, including in its Rates on an annual basis the amount needed to fund current period capital improvements – or through the issuance of long-term debt, which has been used to finance major upgrades to the system, such as a recent upgrade to the wastewater treatment plant.

46. The City confirmed this policy in its FY 2020 Budget (page 46), where the City stated:

It will be a long-term goal that each utility or enterprise will ensure future capital financing needs are met by using a **combination of current operating revenues and revenue bond financing**. Therefore a goal is established that 15% of total project costs should come from operating funds of the utility or enterprise.

47. Remarkably, the City continues to accumulate excessive cash reserves in its Stormwater Fund even though its professional consultants have counseled against that practice.

48. In 2017, the City retained Stantec Consulting Service Inc. (“Stantec”) to perform a comprehensive “Cost of Service” study of its Stormwater Fund. After conducting a detailed analysis of the cost structure associated with the City’s Stormwater System, Stantec recognized that the City’s cash and investments in its Stormwater Fund were far in excess of appropriate reserve amounts, thus confirming that the City’s prior Stormwater Charges were unreasonable because they did not reflect the City’s “cost of service.” Stantec determined that, as of June 30, 2016, the Stormwater Fund, which had \$10.1 million in cash and investments at the time, had at least \$8 million more than it needed.

49. In a report issued in May 2018, Stantec recommended that the City “draw down” those excessive reserves over time by utilizing them to partially or completely finance ongoing and future stormwater capital improvement projects instead of completely funding those projects through Rates or other sources like long-term debt. Contrary to the recommendation, however, the City actually increased its Stormwater Fund cash and investments by almost \$5 million between July 1, 2016 and June 30, 2019.

50. Through collection of the Stormwater Charges described above, the City has accumulated cash in the Stormwater Fund far beyond the amount necessary to ensure the continued provision of storm sewer service to its residents.

51. Payment of the Stormwater Charges was not voluntary. In this regard, the stormwater ordinance requires that unpaid Stormwater Charges be transferred to the tax rolls and further authorizes the “administrator” to “disconnect water service, sanitary sewer and stormwater sewer service to any property” whose owner fails to pay the Stormwater Charges. *See* Ordinance, Chapter 33, Section 2:221.

52. Further, City Charter Section 15.5 provides:

SECTION 15.5.

- (a) The Council shall provide by ordinance for the collection of rates and charges for public utility services furnished by the City. When any person fails or refuses to pay to the City any sums due on utility bills, the service upon which such delinquency exists may be discontinued and suit may be brought for the collection thereof.
- (b) Except as otherwise provided by law, the City shall have as security for the collection of all charges for utility services furnished by it a lien upon the premises to which such utility services were supplied and, for such purposes, shall have all the powers granted to cities by law. Such lien shall become effective immediately on the distribution or supplying of such utility services to such premises.
- (c) Except as otherwise provided by law, all unpaid charges for utility services furnished to any such premises, which, on the thirty-first day of March of each year, have remained unpaid for a period of three months or more, shall be reported by the Controller to the Council at the first meeting thereof in the month of April. The Council thereupon shall order the publication in a newspaper of general circulation in the City of notice that all such unpaid utility charges not paid by the thirtieth day of April will be assessed upon the City's tax roll against the premises to which such utility services were supplied or furnished, and such charges shall then be spread upon the City's tax roll and shall be collected in the same manner as the city taxes.
- (d) As further security for the payment of charges for utility services, the Council may require meter deposits of occupants of premises to which such services are supplied.

## CLASS ALLEGATIONS

53. Plaintiff brings this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities who/which have paid the City for Stormwater Charges during the relevant class period.

54. The members of the Class are so numerous that joinder of all members is impracticable.

55. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class it seeks to represent, and Plaintiff was injured by the same wrongful conduct that injured the other members of the Class.

56. The City has acted wrongfully in the same basic manner as to the entire class.

57. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

- a. Whether the Stormwater Charges are disguised taxes;
- b. Whether the Stormwater Charges violate the Headlee Amendment;
- c. Whether the Stormwater Charges serve a revenue raising purpose;
- d. Whether the Stormwater Charges are proportionate to the necessary costs of the City's operation and maintenance of its stormwater functions;
- e. Whether the Stormwater Charges are voluntary; and
- f. Whether the City should be forced to disgorge the improperly collected Stormwater Charges.

58. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action, and has retained competent and experienced counsel to prosecute this action.

59. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it unlikely that members of the class would prosecute individual actions. At the same time, it is probable that the amount which may be recovered by individual class members will be large enough in relation to the expense and effort of administering the action to justify a class action. Plaintiff anticipates no difficulty in the management of this action as a class action.

**COUNT I**

**VIOLATION OF THE HEADLEE AMENDMENT**

60. Plaintiff incorporates Paragraphs 1 through 59 of this Complaint, inclusive, as if fully set forth herein.

61. The City is bound by the Michigan Constitution of 1963, including those portions commonly known as the Headlee Amendment.

62. In particular, the City may not disguise a tax as a fee under Article 9, § 31 of the Michigan Constitution of 1963.

63. The Stormwater Charges are disguised taxes, intended to avoid the obligations of the Headlee Amendment, including the requirement that the Stormwater Charges, as taxes, be approved by a majority of the electorate.

64. The Stormwater Charges have all relevant indicia of a tax:

- a. The Stormwater Charges are motivated by a revenue-raising and not regulatory purpose;

- b. The Stormwater Charges are disproportionate to the City's actual costs of providing stormwater disposal services;
- c. The payers of the Stormwater Charges benefit in no manner distinct from any other taxpayer or the general public;
- d. Payment of the Stormwater Charges is not voluntary;
- e. Various other indicia of a tax described in *Bolt v. Lansing* are present.

65. The City has violated the Headlee Amendment by imposing and collecting the Stormwater Charges.

66. As a direct and proximate result of the City's improper conduct, the City has collected millions of dollars to which it is not entitled.

67. As a direct and proximate result of the City's assessment of the Stormwater Charges, Plaintiff and the Class have been harmed.

68. The City should be required to disgorge the Stormwater Charges it has collected and refund these amounts to Plaintiff and the Class.

#### **PRAYER FOR RELIEF**

Plaintiff requests that the Court grant the following relief:

- A. Certify this action to be a proper class action with Plaintiff certified as Class Representative and Kickham Hanley PLLC designated Class Counsel;
- B. Define the Class to include all persons or entities who/which have paid the City or incurred Stormwater Charges to the City at any time in the one year preceding the filing of this lawsuit and/or who/which pay the City or incur Stormwater Charges during the pendency of this action (the "Class Period");
- C. Enter judgment in favor of Plaintiff and the Class and against the City;



D. Order and direct the City to disgorge and refund all Stormwater Charges collected during the Class Period and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Stormwater Charges to which Plaintiff and the Class are entitled;

E. Find and declare that the Stormwater Charges are unlawful taxes imposed in violation of the Headlee Amendment;

F. Permanently enjoin the City from imposing or collecting any Stormwater Charges, unless those Charges receive voter approval in conformance with the Headlee Amendment;

G. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

H. Grant any other appropriate relief.

KICKHAM HANLEY PLLC

/s/ Gregory D. Hanley

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